

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARDS OF TRUSTEES OF THE
LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND, et al.,

Plaintiffs,

V.

BARRY CIVIL CONSTRUCTION, INC., et al.,

Defendants.

CASE NO. 2:21-cv-00209-JHC

ORDER GRANTING PLAINTIFFS'
MOTION FOR DEFAULT JUDGMENT

I.

INTRODUCTION

This matter comes before the Court on Plaintiffs Boards of Trustees of the Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund, and Western Washington Operating Engineers-Employers Training Trust Fund's (collectively "Trust Funds") Motion for Default Judgment against Defendants Barry Civil Construction, Inc. (BCCI), Stephany Sturrock, Robert Barry, and

1 Brian Berry. *See* Dkt. #19. The motion is unopposed. *See generally* Dkt. The Court has
 2 considered the motion, the record, and the applicable law. Being fully advised, the Court
 3 GRANTS the motion.

4 **II.**

5 **BACKGROUND**

6 In 2010, Defendant BCCI, a construction employer, entered a collective bargaining
 7 agreement (CBA) with Locals 302 and 612 of the International Union of Operating Engineers, a
 8 labor organization. Dkt. #1 at 7–8. The CBA incorporates the terms and conditions of the Trust
 9 Agreements that govern Defendants Trust Funds. *Id.* at 7. The CBA requires BCCI to pay
 10 employee benefit contributions to the Trust Funds. *Id.* at 2–3.

11 In March 2015, BCCI entered a Settlement Agreement (2015 Settlement) with the Trust
 12 Funds. Dkt. #1 at 10–12. The President of BCCI, Defendant Stephany Sturrock, executed the
 13 Agreement on behalf of the company. *Id.* Per the terms of the 2015 Settlement, BCCI
 14 committed to paying the Trust Funds \$481,364.71, which is the amount BCCI owed for
 15 delinquent contribution payments between May 2014 and February 2015, and 12% annual
 16 interest on the declining balance. *Id.* Defendants Stephany Sturrock, Robert Barry, and Brian
 17 Barry each personally guaranteed this payment in a signed agreement. Dkt. #1 at 14. BCCI paid
 18 only \$119,187.64 of the amount owed under the 2015 Settlement. *Id.* at 4.

19
 20 In October 2017, BCCI entered a second settlement agreement (2017 Settlement),
 21 promising to pay the Trust Funds \$499,039.26¹ plus 12% annual interest on the declining
 22

23 ¹ This amount includes all remaining unpaid contributions in the 2015 Agreement, additional
 24 unpaid contributions until May 2017, interest, dues, liquidated damages, audit fees, attorney fees, and
 costs. *See* Dkt. #1 at 28.

1 balance until full payment. Dkt. #1 at 20–30. The 2017 Settlement includes new Personal
 2 Guaranty agreements for this amount signed by Defendants Stephany Sturrock, Robert Barry,
 3 and Brian Barry. Dkt. #1 at 23–25. To date, BCCI has paid only \$40,000.00 of this amount, and
 4 it stopped submitting payments in July 2018. Dkt. #1 at 4; Dkt. #21 at 6, 12.

5 Plaintiffs filed their Complaint in February 2021 and served the Defendants. Dkt. #1;
 6 Dkt. #5–8. They bring this action under the Employee Retirement Income Security Act of 1974,
 7 29 U.S.C. § 1001 (ERISA), and claim that Defendants breached the CBA and settlement
 8 agreements. Dkt. #1 at 1–3. In November 2021, the Court entered a Clerk’s Order of Default
 9 against all Defendants for failure to appear. Dkt. #18; *see* Fed. R. Civ. P. 55(a). In August 2022,
 10 Plaintiffs brought this Motion for Default Judgment in the amount of \$688,684.70, including:

- 11 (1) \$459,039.26 for the remaining balance on the 2017 Settlement;
- 12 (2) \$224,715.44 in declining interest on the unpaid balance owed for the 2017
 13 Settlement;
- 14 (3) \$4,015.00 in attorney fees; and
- 15 (4) \$915.00 in litigation costs

16 Dkt. #19 at 8–9.

17 III.

18 DISCUSSION

19 A. Legal Standard

20 If a defendant fails to plead or otherwise defend, the clerk enters the party’s default. Fed.
 21 R. Civ. P. 55(a). Then, upon a plaintiff’s request or motion, the court may grant default
 22 judgment for the plaintiff. Fed. R. Civ. P. 55(b)(2); *see Aldabe v. Aldabe*, 616 F.2d 1089, 1092
 23 (9th Cir. 1980). On default judgment motions, “[t]he court must accept all well-pled allegations
 24

1 of the complaint as established fact, except allegations related to the amount of damages.” *UN4*
 2 *Prods., Inc. v. Primozych*, 372 F. Supp. 3d 1129, 1133 (W.D. Wash. 2019) (citing *TeleVideo Sys.,*
 3 *Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987)). Courts typically consider these factors
 4 for a determination of default judgment:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
 6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
 7 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
 whether the default was due to excusable neglect, and (7) the strong policy
 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

8 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are generally
 9 disfavored, so “default judgment is appropriate only if the well-pleaded factual allegations of the
 10 complaint suffice to establish a plaintiff's entitlement to a judgment under the applicable law.”

11 *Dentist Ins. Co. v. Luke St. Marie Valley Dental Grp., P.L.L.C.*, CASE NO. 2:21-cv-01229-JHC,
 12 2022 WL 1984124 (W.D. Wash. Jun. 6, 2022) (citing *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d
 13 847, 855 (9th Cir. 2007)).

15 B. *Eitel* Factors

16 1. Prejudice to Plaintiffs

17 “[P]rejudice exists where the plaintiff has no recourse for recovery other than default
 18 judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014)
 19 (citation and internal quotation marks omitted). Defendants have failed to respond to this action,
 20 so default judgment is Plaintiffs' only means for recovery. *See Eve Nevada, LLC v. Derbyshire*,
 21 CASE NO. 21-0251-LK, 2022 WL 279030 (W.D. Wash. Jan. 31, 2022); *Bd. of Trs. of U.A. Loc.*
 22 *No. 159 Health & Welfare Tr. Fund v. RT/DT, Inc.*, No. C 12-05111 JSW, 2013 WL 2237871, at
 23 *4 (N.D. Cal. May 21, 2013) (“Because ERISA provides that federal courts have exclusive
 24

1 jurisdiction for claims of this nature, denial of Plaintiffs' Motion would leave them without a
 2 remedy.”). Thus, this factor supports default judgment.

3 2. Merits of Plaintiffs' claims and Sufficiency of Complaint

4 “Courts often consider the second and third *Eitel* factors together.” *Developers Sur. and*
 5 *Indem. Co. v. View Point Builders, Inc.*, CASE NO. C20-0221JLR, 2020 WL 3303046, at *5
 6 (W.D. Wash. Jun. 17, 2022). Plaintiffs claim that Defendants breached the CBA, Trust
 7 Agreements, Settlement Agreements, and Personal Guaranties because they failed to pay
 8 delinquent employee contributions. Dkt. #1 at 2–5. Under Section 515 of ERISA, employers
 9 must pay contributions that are required “under the terms of the plan or under the terms of a
 10 collectively bargained agreement.” 29 U.S.C. § 1145. Section 502(g) of ERISA states,

11 In any action under this subchapter by a fiduciary for or on behalf of a plan to
 12 enforce [Section 515] in which a judgment in favor of the plan is awarded, the
 13 court shall award the plan-

- 14 (A) the unpaid contributions
- 15 (B) interest on the unpaid contributions
- 16 (C) an amount equal to the great of
 - 17 (i) interest on the unpaid contributions, or
 - 18 (ii) liquidated damages provided for under the plan in an amount not in
 excess of 20% . . .
- 19 (D) reasonable attorney's fees and costs of the action, to be paid by the
 defendant, and
- 20 (E) such other legal or equitable relief as the court deems appropriate.

21 29 U.S.C. § 1132(g)(2).

22 Plaintiffs cite unambiguous terms in the 2017 Settlement and Personal Guaranties
 23 outlining Defendants' liability for \$499,039.26 and 12% interest on the declining balance. Dkt.
 24 #1 at 20–30. The Plaintiffs also submit a declaration with the terms of the Trust Agreements
 incorporated into the CBA, which provide for recovery of outstanding contribution payments

1 plus 12% interest and liquidated damages. Dkt. #20 at 39, 101. Accepting their allegations of
 2 nonpayment as true, Plaintiffs present enough facts to show a contract breach claim is plausible
 3 and Defendants are liable for their failure to pay contributions and delinquent payments under
 4 ERISA. Thus, the second and third *Eitel* factors weigh in favor of Plaintiffs.

5 3. Sum of money at stake

6 This factor “considers whether the amount of money requested is proportional to the
 7 harm caused.” *Sun Life Assurance Co. of Canada v. Estate of Wheeler*, CASE NO. C19-
 8 0364JLR, 2020 WL 433352, at *4 (W.D. Wash. Jan. 28, 2020). Plaintiffs request \$688,684.70 on
 9 default judgment. Dkt. #19 at 8. Except for attorney fees and costs of litigation, the amount
 10 requested is accounted for in the CBA and Settlement Agreements. *See* Dkt. #1 at 20–30. And
 11 the total amount is covered under Section 502 of ERISA, which provides for damages on unpaid
 12 contributions, interest on those contributions, attorney fees, and litigation costs.
 13 29 U.S.C. § 1132(g)(2). Thus, though the sum Plaintiffs request is significant, it is proportional
 14 to their claim, and the fourth *Eitel* factor supports default judgment. *See Bd. of Trs. of U.A. Loc.*
 15 *No. 159 Health & Welfare Tr. Fund v. RT/DT, Inc.*, No. C 12-05111 JSW, 2013 WL 2237871, at
 16 *4 (N.D. Cal. May 21, 2013).

17 4. Possibility of dispute over material facts

18 There is no sign that the material facts are in dispute. “The general rule of law is that
 19 upon default the factual allegations of the complaint, except those relating to damages, will be
 20 taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). Defendants did
 21 not appear, so the Clerk correctly entered default against them. *See* Dkt. #18. Additionally,
 22 where a “Defendant’s obligations under the collective bargaining agreement are clear, the
 23 possibility for any factual disputes is unlikely.” *Bd. of Trustees of U.A. Loc. No. 159 Health &*

1 *Welfare Tr. Fund v. RT/DT, Inc.*, No. C 12-05111 JSW, 2013 WL 2237871, at *6 (N.D. Cal.
 2 May 21, 2013). In this case, Defendants' obligations were outlined in several agreements,
 3 including the CBA and the 2017 Settlement, so this factor weighs in favor of Plaintiffs.

4 5. Probability that default was because of excusable neglect

5 The sixth *Eitel* factor assesses whether Defendants' default for failure to appear was
 6 because of excusable neglect. *Boards of Trustees of Inland Empire Elec. Workers Welfare Tr. v.*
 7 *Excel Elec. Servs., Inc.*, No. 2:21-CV-00200-MKD, 2022 WL 1243663, at *4 (E.D. Wash. Apr.
 8 26, 2022). Generally, courts do not find excusable neglect when defendants were properly
 9 served with the complaint. *See, e.g., Maersk Line v. Golden Harvest Alaska Seafood LLC*, No.
 10 C20-1140-JLR-MLP, 2020 WL 6083464, at *4 (W.D. Wash. Sept. 30, 2020), *report and*
 11 *recommendation adopted*, No. C20-1140 JLR, 2020 WL 6077419 (W.D. Wash. Oct. 15, 2020).
 12 Plaintiffs establish that they did properly serve Defendants. *See* Dkt. #5–8. Notably, the current
 13 suit is not the first case that Plaintiffs have brought in which Defendants failed to appear. *See*
 14 *Locs. 302 & 612 of Int'l Union of Operating Engineers Constr. Indus. Health & Sec. Fund v.*
 15 *Barry Civ. Constr. Inc.*, No. 2:19-CV-00800-BAT, 2021 WL 796270, at *5 (W.D. Wash. Mar. 2,
 16 2021).

17 6. Policy favoring decision on the merits

18 Generally, cases "should be decided upon their merits whenever reasonably possible," so
 19 courts disfavor default judgment on this factor. *Eitel*, 782 F.2d at 1472. But in this case,
 20 Defendants' failure to appear or respond "makes a decision on the merits impractical, if not
 21 impossible," so the Court is not precluded from granting default judgment. *PepsiCo, Inc. v. Cal.*
 22 *Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002); *see also Empl. Painters' Trust v. Dahl*
 23
 24

1 *Constr. Servs., Inc.*, CASE NO. C19-1541-RSM, 2020 WL 3639591 (W.D. Wash. July 6, 2020).

2 Thus, default judgment is an appropriate remedy in this case.

3 In sum, each *Eitel* factor supports default judgment.

4 C. Damages Calculation

5 Because the Court does not accept the amount of claimed damages as true in a default
6 judgment motion, it must assess whether Plaintiffs' claimed damages are appropriate to award.

7 *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). The plaintiff has the burden of
8 proving its requested damages are reasonable and supported by evidence. *Bd. Of Trs. Of the*
9 *Boilermaker Vacation Tr. v. Skelly, Inc.*, F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

10 Under Section 502(g) of ERISA, awards of liquidated damages, interest, attorney fees,
11 and costs of litigation are required for successful claims of unpaid contributions brought by Trust
12 Funds against employers. 29 U.S.C. § 1132(g)(2); *Northwest Adm'rs, Inc. v. Albertson's, Inc.*,
13 104 F.3d 253, 258 (9th Cir. 1996).

14 1. Unpaid Contributions and Interest

15 ERISA allows Trust Funds to recover unpaid contributions, and interest on those
16 contributions, from employers. 29 U.S.C. § 1132(g)(2). In this case, those two values constitute
17 \$683,754.70 of Plaintiffs' claimed damages. Dkt. #1 at 9. To arrive at that number, Plaintiffs
18 first cite the 2017 Settlement—signed by Defendants—that includes a breakdown of the unpaid
19 contributions, interest, and other costs due in October 2017, which was \$499,039.26. Dkt. #1 at
20 30. Plaintiffs also cite the Trust Agreements,² as well as the 2017 Settlement, which reflect that
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24 ² These are provided in a declaration of the Data Controller of the Trust Fund Defendants. See
Dkt. #20.

BCCI must pay a 12% annual interest rate on whatever remains of the \$499,039.26 until it is paid in full. Dkt. #20–30; Dkt. #20 at 3. Defendants paid Plaintiffs \$40,000 between October 2017 and July 2018, so the remaining amount owed from the 2017 Settlement is \$459,039.26. Plaintiffs provide an apparently accurate calculation of interest that accrued on that amount between July 15, 2018, when Defendants stopped making payments, and August 2022, arriving at \$224,715.44. Dkt. #21 at 12.

Plaintiffs have thus provided enough evidence to show a reasonable claim of \$683,754.70 in unpaid contributions and interest.

2. Attorney Fees and Litigation Costs

Courts usually assess reasonable attorney fees using the “lodestar” calculation which multiplies “the number of hours reasonably expended on the litigation” by “a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

Plaintiffs request \$4,015.00 in attorney fees. Dkt. #1 at 9. Plaintiffs’ counsel has an hourly rate of \$275 and claims to have worked 14.60 hours on this case. Dkt. #21 at 2. This is a reasonable rate for an ERISA attorney. *See Empl. Painters’ Trust v. Dahl Constr. Servs., Inc.*, CASE NO. C19-1541-RSM, 2020 WL 3639591 (W.D. Wash. July 6, 2020) (citing several ERISA cases in which district courts approved hourly rates greater than \$300). Plaintiffs’ counsel submits a thorough hourly billing record that details the tasks completed in each period of time. *See* Dkt. #21 at 14–15. The Court finds nothing to suggest the number of billed hours is unreasonable in this case. Plaintiffs also list all litigation costs, which the Court finds reasonable. Dkt. #21 at 17. Thus, the Court authorizes a default judgment of \$4,015 for attorney fees and \$915 for litigation costs.

IV.

CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for Default Judgment. Dkt. #19. The Court further concludes that the amount of damages is reasonable and supported by the record, so it is ORDERED that Plaintiffs have a judgment to recover \$688,684.70 from Defendants.

Dated this 6th day of December, 2022.

John H. Chun
John H. Chun
United States District Judge